3140.

SUPREME COURT OF THE UNITED STATES.

No. 187.

JOHN DOE, EX DEM. HALLETT & WALKER, EXECUTORS OF JOHN KENNEDY, DECEASED, PLAINTIFFS IN ERROR,

vs.

ALFRED R. BEEBE, GEORGE W. HILLIARD, ALEXANDER M. CARR, CHAS. T. KETCHUM, AND JOHN HORSFELDT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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GIDEON, Printer.

THE STATE OF ALABAMA,
Clerk's office of the supreme court.

JOHN DOE, ex dem. Hallett and Walker, executors of Joshua Kennedy, deceased,
vs.
ALFRED R. BEEBE, tenant in possession, &c.

Be it remembered, that on the sixth day of June, anno domini one thousand eight hundred and forty-four, there was filed in the office of the clerk of the supreme court of the State of Alabama, a writ of error and transcript of record in words and figures as follows, to wit:

The State of Alabama, to the clerk of the circuit court of Mobile county, greeting:

Whereas it is represented that in the record and proceedings of a cause tried and determined at a circuit court begun and held for the county of Mobile, on the sixth Monday after the third Monday of September, in the year of our Lord one thousand eight hundred and forty-three, wherein John Doe, on the demise of Joshua Kennedy, is plaintiff, and Richard Roe, A. R. Beebe et al., tenants in possession, are defendants, manifest error hath intervened to the damage of the said John Doe.

Therefore, we command you to send, certified under your hand and official seal, a transcript of the record in said cause, to the judges of our supreme court, at a term thereof to be holden on the first Monday of June next, that if error there be the same may be corrected.

Witness Augustus Brooks, clerk of our said circuit court, at office, this twentieth day of May, in the year of our Lord one thousand eight hundred and forty-four, and of American independence the sixty-seventh year. Issued 20th day of May, 1844.

Attest: A. BROOKS, *Clerk.*

THE STATE OF ALABAMA, *Mobile county.*

Pleas had before the honorable John Bragg, judge of the circuit court of the sixth judicial circuit of the State of Alabama, at a circuit court for the county of Mobile, begun and held on the sixth Monday after the third Monday of September, A. D. 1843.

THE STATE OF ALABAMA, *Mobile county.*

Declaration.

In the circuit court of said county, of the term of the fourth Monday of March, A. D. 1839, John Doe, plaintiff, by his attorneys, complains of Richard Roe, defendant in custody, &c., of a plea of trespass in ejectment, &c., wherefor the said Richard Roe, with force and arms,

broke and entered into a certain lot of ground and land covered with water, in the city and county of Mobile, with the appurtenances and tenements thereon, &c., which Joshua Kennedy had demised to said John Doe for a certain time which is not yet expired; and also with force and arms, &c., entered into a certain other lot of ground in the city and county of Mobile, with the appurtenances and tenements thereon, and land covered with water, which Joshua Kennedy had demised to the said John Doe for another term, which is not yet expired, and ejected him from his said lots, and other wrongs to the said John Doe there did to the great damage of the said John Doe and against the peace and dignity of the State of Alabama. For that whereas the said Joshua Kennedy, on the first day of June, in the year eighteen hundred and twenty-five, at Mobile, in the county of Mobile, had demised to the said John Doe the said lot of ground and land covered with water first above mentioned, situate, lying, and being, and described as follows, that is to say: All that certain messuage and tenement with the appurtenances, and being a lot of ground, and wharves and docks, and land covered with water, situated on the east side of Water street, and extending from Water street eastwardly to the channel of the Mobile river, bounded on the south by the cotton press buildings erected by George J. S. Walker, and known by the name of Walker's press, and by the wharf in front of said press, on the east by the channel of Mobile river, on the west by Water street, and on the north by property of said Joshua Kennedy, lately claimed by George J. S. Walker and others. The said lot commencing at the northwest corner of the said building, called Walker's press, and extending northwardly along the east side of Water street, one hundred and fifty feet, and extending eastwardly along the north line of said cotton press building to the channel of the river, and fronting on the channel of Mobile river one hundred and fifty feet. To have and to hold the said lot and premises to the said John Doe and his assigns, from the said first day of June, in the year eighteen hundred and twenty-five, for and during and unto the full end and term of twenty years, from thence next ensuing and fully to be complete and ended. By virtue of which said demise the said John Doe entered upon the said lot and premises, wharves, docks, and land covered with water above mentioned, with the appurtenances, and became and was thereof, being so thereof possessed, the said Richard Roe, afterwards, to wit, on the first day of July, 1830, with force and arms, &c., entered into the said described premises, with the appurtenances, which the said Joshua Kennedy had demised to the said John Doe in manner and for the term aforesaid, which term is not yet expired, and ejected the said John Doe from his said lot; and whereas also the said Joshua Kennedy, on the first day of June, in the year eighteen hundred and thirty-seven, at Mobile, in the county of Mobile, had demised to the said John Doe the said lot of ground, secondly, of land and land covered with water, with the tenements, wharves, docks, &c., thereon, being a lot, &c., extending east and west from the east side of Water street to the channel of the river Mobile, and being one

hundred and fifty feet in breadth north and south, bounded on the east by the channel of the Mobile river, on the south by the brick building called Walker's Cotton Press, and by the dock and wharf in front of the said Walker's press, on the west by Water street, and the north by a lot, the property of Joshua Kennedy, and lately claimed by G. J. S. Walker and others. To have and to hold the said last mentioned premises to the said John Doe and his assigns from the said first day of June, in the year eighteen hundred and thirty-seven, for and during and unto the full end and term of twelve years, from thence next ensuing and fully to be complete and ended. By virtue of which said second demise last mentioned the said John Doe entered upon the said last mentioned premises above mentioned, with the appurtenances, and became and was thereof possessed for the said last mentioned term so to him as aforesaid granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the first day of July, 1837, with force and arms, &c., entered into the said last mentioned premises, with the appurtenances, which the said Joshua Kennedy had demised to the said John Doe in manner and for the said term last aforesaid, which term had not yet expired, and ejected the said John Doe from his said lot, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama. Wherefore the said John Doe saith that he is injured and hath sustained damage to the value of twenty thousand dollars; and therefore he brings his suit, &c.

STEWART, THORNTON, & EASTON,
Attorneys for plaintiff.

To Alfred R. Beebe:

I am informed that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of our circuit court for Mobile county, to be held on the second Monday after the fourth Monday of October, 1837, on the first day of said term, before the judge of said court, at the court-house of said county, by some attorney of said court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered by default, and you will be turned out of possession.

Your loving friend,
RICHARD ROE.

Mobile, 31st Oct., 1837.

Filed 31st October, 1837.

M. J. McCRAE, *Clerk.*

Received 1st November, 1837, and executed the same day on Alfred R. Beebe, by leaving a copy of the within with him.

W. MAGEE, *Sheriff Mobile Co.*

The STATE OF ALABAMA, *county of Mobile.*

In the circuit court of said county, of the term of the fourth Monday, after the fourth Monday of March, A. D. 1837.

John Doe, plaintiff, by his attorneys, complains of Richard Roe, defendant, in custody, &c., of a plea of trespass in ejectment, &c., wherefore the said Richard Roe, with force and arms, &c., broke and entered into a certain lot of ground and land, covered with water, in the city and county of Mobile, with the appurtenances and tenements thereon, &c., which Joshua Kennedy had demised to the said John Doe for a certain term which is not yet expired; and also with force, and arms, &c., entered into a certain other lot of ground, in the city and county of Mobile, with the appurtenances and tenements thereon, and land covered with water, which Joshua Kennedy had demised to the said John Doe, for another term, which is not yet expired, and ejected him from his said lot, and other wrongs to the said John Doe there did, to the great damage of the said John Doe and against the peace and dignity of the State of Alabama. For that whereas, the said Joshua Kennedy, on the first day of June, in the year eighteen hundred and twenty-five, at Mobile, in the county of Mobile, had demised to the said John Doe the said lot of ground and land covered with water, first above mentioned, situate, lying, and being, and described as follows, that is to say: all that certain messuage and tenement, with the appurtenances, and being a lot of ground, and wharves and docks, and land covered with water, situate on the east side of Water street, and extending from Water street, eastwardly, to the channel of the Mobile river; bounded on the south by the cotton press buildings, erected by George J. S. Walker, and known by the name of Walker's Cotton Press, and by the wharf in front of said press; on the east by the channel of the Mobile river; on the west by water street; and on the north by property of said Joshua Kennedy, lately claimed by George J. S. Walker and others; the said lot commencing at the northwest corner of the said buildings, called Walker's press, and extending northwardly along the east side of Water street, one hundred and fifty feet; and extending eastwardly, along the north side of said cotton press building, to the channel of the river; and fronting on the channel of Mobile river one hundred and fifty feet; to have and to hold the said lot and premises to the said John Doe and his assigns, from the said first day of June, in the year eighteen hundred and twenty-five, for, and during, and unto the full end and term of twenty years, from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered upon the said lot and premises, wharves, docks, and land covered with water, above mentioned, and the appurtenances, and became and was thereof possessed for the said above mentioned term so to him as aforesaid granted; and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the first day of July, 1830, with force and arms, &c., entered into the said described premises, with the appurtenances, which the said Joshua Kennedy had demised to the said John Doe, in manner and for the term aforesaid, which term is

not yet expired, and ejected the said John Doe from his said lot; and whereas, also, the said Joshua Kennedy, on the first day of June, in the year eighteen hundred and thirty-seven, at Mobile, in the county of Mobile, had demised to the said John Doe, the said lot of ground secondly above mentioned, situate, and lying, and being, and described as follows, that is to say, all that lot of land, and land covered with water, with the tenements, wharves, docks, &c., thereon, being a lot, &c., extending east and west, from the east side of Water street, to the channel of the river Mobile, and being one hundred and fifty feet in breadth, north and south, bounded on the east by the channel of the river Mobile; on the south, by the brick building called Walker's Cotton Press, and by the dock and wharf in front of the said Walker's press; on the west by Water street; and on the north by a lot, the property of John Kennedy, and lately claimed by George J. S. Walker and others; to have and to hold the said last mentioned premises to the said John Doe and his assigns, from the said first day of June, in the year eighteen hundred and thirty-seven, for, and during, and unto the full end and term of twelve years, from thence next ensuing, and fully to be complete and ended; by virtue of which said second demise last mentioned, the said John Doe entered upon the said last mentioned premises above mentioned, with the appurtenances, and became and was thereof possessed for said last mentioned term so to him as aforesaid granted; and the said John Doe being thereof possessed, the said Richard Roe, afterwards, to wit, on the first day of July, 1837, with force and arms, &c., entered into the said last mentioned premises, with the appurtenances, which the said Joshua Kennedy had demised to the said John Doe, in manner and for the said term last aforesaid, which term had not yet expired, and ejected the said John Doe from his said lot, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama; wherefore the said John Doe saith, that he is injured, and hath sustained damages to the value of twenty thousand dollars. Therefore he brings his suit, &c.

STEWART, THORNTON, & EASTON,
Attorneys for plaintiffs.

To George W. Hilliard, or in his absence to Samuel M. Allen, John F. Adams, attorney, Alexander M. Carr, Charles Ketchum, Alexander J. Jude, and John H. Horsfeldt.

Take notice, that the premises sued for in the preceding declaration are the same as those recovered in the case of Doe, ex dem. of G. H. Hilliard, against A. R. Beebe and Henry Etter, and also in the suit of Doe on the demise of George Wragg, George J. S. Walker, et al., vs. A. R. Beebe, Henry et al., tried at the spring term of the circuit court for Mobile county, 1841, at which term this suit was pending in said circuit court. and also the same premises as those recovered in the case of John W. Horsfeldt against John a Campbell and Daniel Chandler, for a forcible entry and detainer, tried before Benjamin Wilkins, a jus-

tice of the peace in and and for said county, on the 16th day of August, 1841; and also the same premises as those recovered in the case of George H. Hilliard, by his next friend Samuel W. Allen, against Alexander M. Carr, Chas. Ketchum, and Alexander J. Jude, for an unlawful detainer tried before Josiah Wilkins, esq., a justice of the peace in and for said county, on the 22d day of January, 1842. If you wish, you can, at the next term of the circuit court for this county, to be holden on the sixth Monday after the fourth Monday in September next, cause yourself to be made a party to this ejectment suit, and defend yourself upon your title, otherwise your recovery will not avail you.

Witness, Augustus Brooks, clerk of said court.

A. BROOKS, *Clerk.*

Issued 8th day of September, 1842.

Sheriff's return.

Received 8th September, 1842, and on the same day I served a copy of the within notice and declaration in ejectment on A. J. Jude; and on the 9th September, 1842, I served a copy of the within notice and declaration on John H. Horsfeldt; and on the 11th day of October, 1842, I served a copy of the within notice and declaration on Alexander M. Carr; and on the 26th of August, 1842, I served a copy of the within notice and declaration on Charles Ketchum.

GEORGE HUGGINS, *Sheriff, M. C.*
By M. J. D. BALDWIN, *Dep. Sheriff.*

Circuit court, Fall term, 1843.

JOHN DOE, on the demise of Joshua Kennedy,
vs.
RICHARD ROE, A. R. Beebe, tenant in possession, &c.

This day the plaintiffs, by their attorneys; and also came George W. Hilliard, by Samuel W. Allen, his next friend, Alfred Beebe, Alexander M. Carr, Charles Ketchum, and John Horsfeldt, (A. J. Jude having died,) by J. F. Adams, their attorney, and they admit themselves in possession of the portion of said premises sued for and described as follows: On the east side of Water street, and extending eastwardly to the channel of Mobile river, and by the wharf in front thereof; on the north by premises lately of the heirs of John Hicks, and more lately claimed by Cook, Wragg, and Walker, and others, extending from Walker's press, one hundred and forty feet on Water street, with the same width, to the channel of the river; and they claim to defend for the same, and confess lease, entry, and ouster, waive a new declaration, and are admitted to defend and plead not guilty as to so much, and disclaim as to the residue; and judgment is granted to the plaintiff against the casual ejector for the remainder of said premises described in said plaintiff's declaration; and thereupon came a jury of good and lawful

men, who, being elected, tried, and sworn to try the issue joined as to the said defendants who have appeared, say: We, the jury, find for the defendants. It is therefore considered by the court, that the defendants who have appeared as aforesaid, go hence without day, and recover of the plaintiffs' lessor their cost by them about their defence expended. And the plaintiffs file a bill of exceptions.

THE STATE OF ALABAMA, *Mobile county.*

I, Augustus Brooks, clerk of the circuit court of Mobile county and State aforesaid, do hereby certify, that the foregoing twenty-four and a half pages contain a true and correct exemplification of the record and proceedings had in the case therein set forth, as full and complete as the same remains now on file in my office.

In testimony of which I have hereunto set my hand and affixed the [SEAL.] seal of my office, at my office, in the city of Mobile, this 29th day of May, A. D. 1844.

A. BROOKS, *Clerk.*

THE STATE OF ALABAMA, *Mobile county.*

Circuit court, to the sheriff of Mobile county, greeting:

Whereas, at a term of the circuit court of Mobile county, held on the sixth Monday after the 3d Monday of September, 1843, in a certain cause in said court, wherein John Doe, on the demise of Joshua Kennedy, is plaintiff, and Richard Roe, A. R. Beebe et al., defendants, a judgment was rendered against said John Doe for costs of suit; to reverse which the said John Doe here applies, on this day, and has obtained from this office a writ of error, returnable to the next term of our supreme court of the State of Alabama, to be held at Tuscaloosa, on the first Monday of June next.

Now, you are hereby commanded, without delay, to cite the said A. R. Beebe et al., or their attorneys, to appear at the next term of our said supreme court, to defend against the said writ of error, if they think proper.

Witness Augustus Brooks, clerk of the circuit court of said county, this 20th day of May, 1844.

Attest: A. BROOKS, *Clerk.*

Endorsement by the sheriff on the said citation in error.

Received 20th May, 1844, and executed on John F. Adams the same day, by leaving with him a copy of the within citation as furnished by the clerk.

C. C. BANCROFT, *Sheriff of Mobile co.*,
By J. P. MAGEE, *Deputy Sheriff.*

Bill of exceptions.

In the circuit court of Mobile county, Fall term, 1843.

JOHN DOE, on the demise of John Kennedy,
vs.
T. G. KIMBALL, administrator of Abbott.

Same plaintiff vs. A. R. Beebe et al.
Same plaintiff vs. The President and Directors of the Bank of Mobile.
Same plaintiff vs. Alabama Life Insurance and Trust Company.
Same plaintiff vs. The President and Directors of the Bank of Mobile.
Same plaintiff vs. Eliza and Thomas Keenan, executors.
Same plaintiff vs. Wragg, Cook, and Walker.

The above being actions of ejectment determined at the fall term, 1843, by the decision of the circuit court of Alabama, in the case against Kimball, and decided by agreement, subject to the following exceptions reserved to the plaintiffs, that is to say:

Be it remembered, that on the trial of these cases the plaintiff, to sustain his claim, introduced and proved the original Spanish grant, thereto attached, and marked A. Also, he proved that the grant had been laid before Commissioner Crawford, who had been appointed under the act of Congress of the 25th of April, 1812, found in Clark's Land Laws, page 606, and following; that Commissioner Crawford had made his report unfavorable to the claim, which will be found in the third volume of the American State Papers, page 19, upon the subject of public lands; that the claim was heard before the register and receiver of St. Stephens, under the act of Congress of the 3d of March, 1827, and a favorable report made, which will be found in the fifth volume of the American State Papers, page 124; and that a special act of Congress was passed 5th of May, 1832; and the patent hereto attached, marked A, was issued in accordance by the United States. The plaintiff introduced the deed of William McVoy, the original claimant, with covenants of special warranty, dated May 1st, 1814, to William and Joshua Kennedy, and the deed from William to Joshua, dated 13th December, 1824.

This constituted the documentary evidence of the plaintiff. The acts of Congress and reports before referred to make part of this bill of exceptions. The documentary evidence on the part of the defendants is as follows:

By the act of Congress on the 20th of April, 1818, the President of the United States was authorized to cause the site of Fort Charlotte, in the city of Mobile, to be sold. Silas Dinsmore, a United States surveyor, made the survey subdividing the land on the site into ten squares, and parts of squares, and laying off streets, conforming, as near as possible, to the plan of the town. The squares were subdivided into lots, which were numbered on the plan made by Dinsmore, hereto attached, marked C.

men, who, being elected, tried, and sworn to try the issue joined as to the said defendants who have appeared, say: We, the jury, find for the defendants. It is therefore considered by the court, that the defendants who have appeared as aforesaid, go hence without day, and recover of the plaintiffs' lessor their cost by them about their defence expended. And the plaintiffs file a bill of exceptions.

THE STATE OF ALABAMA, *Mobile county.*

I, Augustus Brooks, clerk of the circuit court of Mobile county and State aforesaid, do hereby certify, that the foregoing twenty-four and a half pages contain a true and correct exemplification of the record and proceedings had in the case therein set forth, as full and complete as the same remains now on file in my office.

In testimony of which I have hereunto set my hand and affixed the [SEAL.] seal of my office, at my office, in the city of Mobile, this 29th day of May, A. D. 1844.

A. BROOKS, *Clerk.*

THE STATE OF ALABAMA, *Mobile county.*

Circuit court, to the sheriff of Mobile county, greeting:

Whereas, at a term of the circuit court of Mobile county, held on the sixth Monday after the 3d Monday of September, 1843, in a certain cause in said court, wherein John Doe, on the demise of Joshua Kennedy, is plaintiff, and Richard Roe, A. R. Beebe et al., defendants, a judgment was rendered against said John Doe for costs of suit; to reverse which the said John Doe here applies, on this day, and has obtained from this office a writ of error, returnable to the next term of our supreme court of the State of Alabama, to be held at Tuscaloosa, on the first Monday of June next.

Now, you are hereby commanded, without delay, to cite the said A. R. Beebe et al., or their attorneys, to appear at the next term of our said supreme court, to defend against the said writ of error, if they think proper.

Witness Augustus Brooks, clerk of the circuit court of said county, this 20th day of May, 1844.

Attest: A. BROOKS, *Clerk.*

Endorsement by the sheriff on the said citation in error.

Received 20th May, 1844, and executed on John F. Adams the same day, by leaving with him a copy of the within citation as furnished by the clerk.

C. C. BANCROFT, *Sheriff of Mobile co.*,
By J. P. MAGEE, *Deputy Sheriff.*

3144.

Bill of exceptions.

In the circuit court of Mobile county, Fall term, 1843.

JOHN DOE, on the demise of John Kennedy,
vs.
T. G. KIMBALL, administrator of Abbott.

Same plaintiff vs. A. R. Beebe et al.
Same plaintiff vs. The President and Directors of the Bank of Mobile.
Same plaintiff vs. Alabama Life Insurance and Trust Company.
Same plaintiff vs. The President and Directors of the Bank of Mobile.
Same plaintiff vs. Eliza and Thomas Keenan, executors.
Same plaintiff vs. Wragg, Cook, and Walker.

The above being actions of ejectment determined at the fall term, 1843, by the decision of the circuit court of Alabama, in the case against Kimball, and decided by agreement, subject to the following exceptions reserved to the plaintiffs, that is to say:

Be it remembered, that on the trial of these cases the plaintiff, to sustain his claim, introduced and proved the original Spanish grant, thereto attached, and marked A. Also, he proved that the grant had been laid before Commissioner Crawford, who had been appointed under the act of Congress of the 25th of April, 1812, found in Clark's Land Laws, page 606, and following; that Commissioner Crawford had made his report unfavorable to the claim, which will be found in the third volume of the American State Papers, page 19, upon the subject of public lands; that the claim was heard before the register and receiver of St. Stephens, under the act of Congress of the 3d of March, 1827, and a favorable report made, which will be found in the fifth volume of the American State Papers, page 124; and that a special act of Congress was passed 5th of May, 1832; and the patent hereto attached, marked A, was issued in accordance by the United States. The plaintiff introduced the deed of William McVoy, the original claimant, with covenants of special warranty, dated May 1st, 1814, to William and Joshua Kennedy, and the deed from William to Joshua, dated 13th December, 1824.

This constituted the documentary evidence of the plaintiff. The acts of Congress and reports before referred to make part of this bill of exceptions. The documentary evidence on the part of the defendants is as follows:

By the act of Congress on the 20th of April, 1818, the President of the United States was authorized to cause the site of Fort Charlotte, in the city of Mobile, to be sold. Silas Dinsmore, a United States surveyor, made the survey subdividing the land on the site into ten squares, and parts of squares, and laying off streets, conforming, as near as possible, to the plan of the town. The squares were subdivided into lots, which were numbered on the plan made by Dinsmore, hereto attached, marked C.

It was in evidence that the lots were sold in 1820 and 1821, and were purchased by the lot company who received patents for the same; all of which are of the same form, and the exhibit D will show the character of them. The lot company purchased all the lands that are embraced in the survey after the purchase by the lot company. They subdivided the lots, altered the streets, and re-sold the property according to this new arrangement. It was in proof, that by the original plan of the city of Mobile, there was a street called Water street, fronting the city, and conterminous with the city, running north and south. The ordinary tides at the old Fort Charlotte was to the west of this street, and extended to the lots laid off by Dinsmore, and the water flowed upon those lots at the ordinary tide; in other words, the ordinary high-water mark of Mobile was upon the front lots sold by the Government at the time of that sale; since that time the river has been excluded from those lots by the improvement of the city, above and below, and especially by the improvements made by the purchasers from the lot company, and has been generally removed to its present channel. The land in dispute, it is admitted, lies east of the eastern line of the survey made by Dinsmore, and between that line and the channel of the Mobile river. The line of the plaintiffs' survey will appear from the map hereto attached, marked (E,) and the whole property in dispute will appear on the same.

It is admitted that the defendants derive title regularly from the lot company. The plaintiffs' counsel moved to charge the jury, that he was entitled to all the land lying between the eastern line of the survey of Dinsmore and the river, under the evidence of title produced by him, and that such parts of the land embraced in the declaration, as was included in that boundary, he was entitled to recover. This charge the court refused.

2. The plaintiffs' counsel moved the court to charge the jury, that under the title exhibited he was entitled to the land embraced in the patent of the United States to his lessor, which was not contained in the grants of the lot company, and that the limits of those lots could not be extended in virtue of any improvements made by them as riparian owners. This charge the court refused.

3. The plaintiffs' counsel moved the court to charge the jury, that if they found the land in dispute to be within the limits of the Spanish grant, and that it was not included in the patents which had been issued by the United States, nor in the survey by Dinsmore, the land belonged to the plaintiff. This charge the court refused; but charged the jury, that the Supreme Court had settled the law of this case, and that this court could do nothing but follow its opinion. The court then read the opinion in the case of Doe ex dem. Joshua Kennedy vs. Kimball, adm'r of Abbott.

3148.

Opinion.

FRANKLIN G. KIMBALL, executor of David Abbott,
vs.
DOE ex dem. J. Kennedy.

Writ of error to the circuit court of Mobile.

This was an action of ejectment brought by the defendant in error, for the recovery of a certain lot of ground, situate in the city of Mobile. The defendant below was admitted to defend as the landlord of the tenants in possession, and confessing lease, entry, and ouster. The cause was tried on the plea of not guilty. At the trial the defendant excepted to the ruling of the court. The plaintiff to make out the title offered in evidence a record from the land office at St. Stephens of the claim of McBoy; also a deed from McBoy to Joshua Kennedy, conveying his interest in the claim; he also read an act of Congress, passed in 1832, in favor of Joshua Kennedy; a patent, certificate, and survey, and a patent issued thereon in 1836, which embraces the locus in quo; further, he offered a certificate copy of Dinsmore's survey of the Fort Charlotte lots by the United States. All of which documentary evidence is made part of the bill of exceptions.

The defendant to support his title offered in evidence patents issued under the authority of the act of Congress of 1818, bearing date 1st October, 1821. These patents describe lots lying immediately west of the locus in quo, being for lots numbered 8, 9, and 10, in square No. 3; each of which had a front of 30 feet, and embraced part of the ground on which Fort Charlotte once stood. He also offered a copy of Dinsmore's map, and proved by the copyist that it was scrupulously exact, and drawn from the original. That the river boundary was marked on the copy as it was in the original, and was correct in point of fact. He called many witnesses who testified, at the time of the sale of the Fort Charlotte lots, high water extended over the eastern limits of the lots conveyed by the defendant's patents. And, further, that the land now in controversy was reclaimed from the water and filled up by the defendant's testator, or those under whom he immediately claimed. The defendant deduced a title to himself to the lots described by the patents, and proved that the property in controversy was adjoining them, and immediately east of them. The court charged the jury, that if they believed the evidence, the plaintiff's title was the best. To which the defendant's counsel excepted. The concession to McBoy bears date in 1806. The act of Congress of 1832 is merely a confirmation of the claim which McBoy transferred to Kennedy; a relinquishment of the interest of the United States in the premises, subject to the just claim of any person derived from the United States, or under either the British, French, or Spanish Governments. The jury returned a verdict in favor of the plaintiff, and judgment was thereupon rendered. To reverse which is the object of the present writ of error.

DARGAN, *for the plaintiff in error.*
STEWART, *for the defendant.*

Collier, C. J. The act of Congress of 1818 authorized the President of the United States, whenever, in his opinion, it was consistent with the public interest, to cause the ground whereon Fort Charlotte, at Mobile, stood, to be surveyed and laid off into lots, with suitable streets, &c.; and when thus surveyed, to sell the lots *a* public sale.

The defendant, in right of his testator, deduced a title to several of these lots under the purchasers at the Government sales, and claims the premises in question as a riparian proprietor. That the property sought to be recovered was below high-water mark at the time the Fort Charlotte lots were sold is not disputed, and the questions are:

1st. What right did those under whom the defendant's testator claimed acquire to the shore in virtue of their purchases of the contiguous land?

2d. Did the concession to McBoy, the act of Congress of 1832, and the patent issued thereunder, invest the plaintiff with a paramount title?

First. The grantee of land from the Government lying along navigable water acquires a right of soil to high-water mark. It is a well settled principle of the common law, that a person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. New Orleans vs. the United States, 10 Peters' Rep., 717; Hagan & Campbell vs. Cleveland, 8 Porter's Rep., and cases there cited. Angell, in his treatise on tide waters, argues to prove that it is allowable to make embankments on or reclaim the shore, and appropriate it to private purposes, where the public are not incommoded; but admits, that the common law, which is founded on the civil law, recognises the State as the legal owner of the shore, in trust for the public, and entitled to judge whether artificial improvements will be promotive of the common right of enjoyment; and consequently may abate an intrusion as a public nuisance or a purpresture. Pp. 125, 133, 143. The inference from the law, as we have stated, is, that accretions from natural causes become the soil of the riparian proprietor. That his limits extend or diminish according as the water may recede or trench upon his land. The State only claims a property in the shore, as the representative of the public, for purposes entirely conservative of the usufruct therein, and never destructive of it. This being the case, it would seem necessarily to follow that the sovereign power can make no disposition of the shore by grant, or otherwise, prejudicial to the right of those for whom it is holden in trust.

This question was considered quite at length in Mayor, &c., of Mobile vs. Eslava, 9 Porter's Rep., 577, in which it was held, that although it was competent for the King of Spain, in the exercise of his unlimited powers, to grant the shore of the navigable waters in his American possessions, yet Congress was prevented, by the stipulations with Alabama, from exercising such a power since its admission into the Union. At the time of the sale of Fort Charlotte lots, the concession to McBoy was wholly inoperative, and would not have authorized a recovery in an action of ejectment. De La Croix vs. Chamberlain, 12 Wheat.

3166.

Rep. In fact, being subsequent in date to the treaty of St. Ildefonso, and not embraced by the stipulations of the treaty of February, 1819, it was null and void according to repeated decisions of the Supreme Court of the United States. Foster & Elam vs. Neilson, 2 Peters' Rep., 254; Garcia vs. Lea, 12 Peters' Rep., 511; Keene vs. Whitaker et al., 14 Peters, 170. See also Inerarity vs. Byrne, 8 Porter's Rep., 176; Pollard's heirs vs. Kibbe, 9 Porter's Rep., 712; Doe ex dem. Pollard's heirs vs. Files, 3 Ala. Rep., N. S., 47; United States vs. Percheman, 7 Peters' Rep., 51.

There can be no question that the concession, adduced by the plaintiff as a link in the title sought to be established, might be recognised by the United States; yet it is conceived that no confirmation, made subsequent to the sale of the Fort Charlotte lots, would overreach and divest the riparian rights which the purchasers of them acquired. By granting the land to the shore, the Government impliedly stipulated with the purchaser, that the shore should be his boundary, subject only to such changes as might be made by the encroachment or recession of the water. The act of 1832 is merely confirmatory of the claim acquired from McBoy, and declares that the "confirmation of this claim, and the patent provided to be issued, shall not be held to interfere with any part of said tract which may have been disposed of by the United States previous to the passage of this act, shall be held to be no more than a relinquishment of whatever title the United States may now have to such tract of land." This statute is set out in extenso in the patent, and the conveyance is made with a reservation of the paramount title of adverse claimants. This being the case, no question can arise as to the conclusiveness of the patent in a court of law; and the inquiry is, whether the purchasers of the Fort Charlotte lots, in virtue of a riparian proprietorship, become entitled to the premises in controversy.

From what we have already said it results, that no subsequent [act] by the Government can operate to divest the defendant's right to alluvion, or change his boundary by interposing another proprietor of the soil between his land and the water. The terms of the act cited forbid the idea that such an interference was contemplated. The conclusions we have stated appear to us to be so fully supported by authority, that we have not thought it necessary to sustain them by an extended argument. Foster & Elam vs. Neilson, re-affirmed as it is by the cases cited from 12 and 14 Peters, is not at all shaken by the elaborate argument contained in the separate opinion of Mr. Justice Baldwin in Pollard's heirs vs. Kibbe, 14 Peters. The view there taken indicates the most laborious research; but, in our judgment, is exceedingly ill timed. It seems to us, with all deference, that it would have been quite as well if the learned judge had contented himself with dissenting in Garcia vs. Lee. The judgment in that case gave to the American interpretation of the treaty of 1819 a judicial sanction irreversible, save only by the other departments of the Government. Whether the construction of Spain was not the true one, or whether it was not demanded by that integrity which should characterize negotiations between independent nations, is an in-

quiry which the Judiciary could not now entertain without an inexcusable disregard of the maxim, stare decisis. A departure from the course of decisions as now established, is also forbidden by the consideration that it would probably unsettle titles to an incalculable extent, while many would be deprived of their rights by the operation of the statute of limitations.

The result is, that the judgment of the circuit court is reversed, and the cause remanded.

To the refusal to charge, and to the charge given, the counsel for the plaintiff except, and pray the court to sign and seal this bill of exceptions; which is done accordingly.

J. BRAGG. [SEAL.]

Exhibit.—Petition.

SENIOR INTENDANT GENERAL: William McBoy, an inhabitant of this town, with the respect that is due to you, represents:

That having a portion of horned cattle feeding in the woods, and ranging therein without limits to his great injury, as they stray away, he is desirous of establishing a plantation, not only for the purpose of preserving, with greater satisfaction and facility, his said stock, and to enjoy them, but also to establish and cultivate a plantation. He therefore prays that you will be pleased to grant to him, by way of sale, a tract of land, situate on the west side of the river Mobile, commencing at the north of a place called Chickasaw Bogue, and running up the said river to the lower corner of a tract of land petitioned for by Mr. Joshua Kennedy, running thence west forty arpens, following the line of the above named Kennedy, and from thence, in a straight direction, to the ford of Chickasaw Bogue, where the road from Fort Stoddart to Mobile crosses it; and from thence down the windings of the said creek to where it empties into the river Mobile at the beginning corner, bounded on the southwest by the above named Chickasaw Bogue, on the east by the river Mobile, on the north by the land petitioned for by the above named Joshua Kennedy, and on the west by vacant lands, a favor which he expects to receive from the acknowledged bounty of your Excellency.

Moreover, that the tract of land above mentioned, for the purpose of establishing a plantation and preserving his stock, being situated at a considerable distance from the town of Mobile, near to which it is his intention to follow his trade as a carpenter, and for the better maintenance of his wife and family, he prays that you will be pleased to grant him, in the same manner, by way of sale, the quantity of twenty arpens more of land, situated conveniently to Mobile, on the west side of the bay, bounded to the south by lands belonging to Don Miguel Eslava, to the east by the bay of Mobile, and on all other sides by vacant lands; on which small tract of land, which is known to be healthy, he intends to erect his dwelling-house, and to live with his family, following his trade of carpenter above named; a favor which he expects to receive from the generosity of your Excellency.

(Signed) WILLIAM McVOY.

Decree.

Pensacola, the month of August, one thousand eight hundred and six.

Let this be communicated to the senior fiscal and minister of the royal treasury.

Signed, MORALES.

Doctor HENDIA,
JUAN MORALES,
VENTURA QUIROGA.

Opinion of the fiscal, or fiscal decree.

At the office of the royal treasury, having examined the application made by William McBoy, an inhabitant of this town, soliciting to have granted to him by title of sale a tract of land, situated on the west side of the river Mobile, commencing at the mouth of the creek called Chickasaw Bogue, to collect thereon his horned stock, which are scattered in the woods, and to form a plantation, for cultivation; as well as twenty arpens more, which are bounded by those of Don Miguel Eslava, for the purpose of constructing buildings for his dwelling, and to live with his family, following his trade of carpenter.

The fiscal minister says: That the petitioner has asked for more than the before named forty arpens of land in front, with the ordinary depth, at the place known on the other side of the bay, from this town by the name of Lime Kilns, at the price of its estimation to form a cow-pen; and it now appearing, that he wishes to fix his residence in the district of the aforesaid Mobile, it will not be easy for the petitioner to divide his object into so many different purposes. And as it might happen that so large a concession might prevent the establishment of the lands by others, which would militate against the protection of Florida; the fiscal is, therefore, of opinion, that upon the condition that the before named lands are not to be alienated in whole or in part, in any event to individuals of foreign domination, and they are to be improved by his own industry, this despatch may be communicated to the señor commandant and sub-delegate of Mobile, in order that he may inform himself, if the before mentioned land is vacant and belongs to the royal domain, and if any good reason is opposed to the said concession; and in his presence to give the necessary order for the appointment of two inhabitants as appraisers, who, in the capacity of appraisers, on the part of the royal treasury, with two others to be appointed by the purchaser, accompanied by the surveyor general or his deputy, with two assisting witnesses, shall proceed to the appraisement, survey, making out, and formation of the figurative plans of the said lands; which proceedings being executed with the accustomed solemnity, shall be remitted to the tribunal, in order that the payment being verified according to the rule prescribed in the regulations for the allotments of lands, the necessary titles may be issued.

The tribunals will nevertheless decide upon what may be most conformable to justice, which the fiscal minister asks of it.

Pensacola, the 12th of August, one thousand eight hundred and six.

Signed, JUAN FRANCISCO ARNAUD DE COURVILLE.

Decree.

Pensacola, the thirteenth of August, one thousand eight hundred and six.

According to the opinion of the fiscal minister, remitting the despatch to the commandant and sub-delegate of Mobile, that he may cause the survey and admeasurement of the two tracts of land referred to in the memorial of the party, by the surveyor general of the province, or his deputy, in that district, with the correspondent declaration of their being vacant, which shall be tested by the said commandant and two neighboring inhabitants. All which being completed, let him proceed to verify the appraisement of both tracts in the mode designated by the fiscal minister, which shall be suspended if there should be found any reason which, after consideration, ought to prevent this concession in the whole or in part, informing us in that event of whatever may occur.

Signed, MORALES.

Doctor HENDIA,
JUAN VENTURA MORALES,
VENTURA QUIROGA.

On the same day, we, the assistant witnesses, communicated the antecedent decree to the fiscal minister of the royal treasury.

MORALES,
QUIROGA.

On the day before mentioned, we notified William McBoy of the antecedent decree.

MORALES.
QUIROGA.

The beforegoing is conformable to its original, which remains in this commandancy, to which I refer myself, and at the request of William McBoy, I give the present before two witnesses of assistance, for want of a notary, and on common paper, sealed paper not being in use in Mobile, on the twenty-seventh day of November, one thousand eight hundred and six, before me,

Signed, FRANC'O MAXIM. DE MAXENT.

RAFAEL SAEZ,
FRANC'O CANELDO.

Don Jose Collins, deputy surveyor of this district.

Pursuant to the order of Don Vincent Sebastian Pintado, surveyor general, dated the 18th August, 1806, I certify to have surveyed and staked out, in favor of Mr. William McBoy, and in presence of Mr. Benjamin Debroca and Thomas Powel, inhabitants of Mobile, a tract of land of twenty arpens and a half superficial, including a lot sixty

feet in front by one hundred and twenty feet in depth, (distinguished by red lines,) belonging to the mulatto, Jack, measuring with the perch of the city of Paris, of eighteen feet of the King in length, agrarian measure in this province; which land, situated in the town of Mobile, is bounded on the north by Government street; on the east by the Mobile river; on the south by the land of Thomas Price; the limits govern by the compass without correcting the variation. On which limits were marked, as boundaries, the trees and stakes marked on the plan, in order that they may serve as boundaries, natural and artificial; and that the same may appear, we sign the present with the figurative plan thereon in Mobile, 15th November, 1806.

Signed, JOSE COLLINS, *Ag'r Dep.*

Signed—THOMAS POWELL,
FRANCIS ALEXANDER.

We, the undersigned inhabitants, that the land mentioned in the antecedent certificate is vacant, and that the same may appear, we sign the present in the town of Mobile, the 15th of November, one thousand eight hundred and six.

(Signed.) FRANCIS ALEXANDER,
THOMAS POWELL.

Note of survey made in the town of Mobile, for Wm. McEvoy, by order of the surveyor general, Don Vincent Pintado, dated Pensacola 18th August, 1806. Began the 14th November, 1806, on the river of Mobile, about 160 toises below the wharf, on the west side. Began at a red cedar picket, mark I M in presence of Thomas Powel and Benjamin Dubroca, on the edge of the water; thence S. 80° W. 13 pr. to a small street, running to the S. E; S. 80° W. 17 prs.; to the N. W, corner of Don Miguel Eslava's lot, at picket I K; thence S. 10° E. 47 prs., along said Eslava's and Lalande's fence to picket E, on Col. Collelle's line; thence N. 89° W. 15 prs., to picket T; thence N. 10° W., 98 prs., to picket X, on Calle Governo; N. 69° E., 14½ prs , with Calle Governo, to picket N; S. 10° E,, 40 prs., to picket V; N. 80° E., 38 prs., to picket M, on the river; thence S. 10 W., 20 prs., along said river shore, to the beginning picket I M; containing superficial arpens 20 A. p. 50 $\frac{9745}{10000}$.

JOSE COLLINS, *Agr. depo.*

Translation of the order of the Spanish surveyor general, Vincente Pintado, to his deputy, Joseph Collins, referred to in the before going certificate of said Collins.

(*Duplicate.*)

William McBoy an inhabitant of this town, having petitioned for two tracts of land in the jurisdiction of Mobile, at the places by his petition, the original whereof he carries with him to present to the commandant and sub-delegate of the jurisdiction. The intendant general of this

province was pleased by his decree of the 13th instant to grant him said tracts at the price of appraisement and valuation, on condition that the same should be vacant, and there should be no cause to prevent the whole or a part of said concession. Wherefore, you will conform to whatever the commandant may determine on this point. Acting moreover in the premises according to what is prescribed in the decree, for which purpose I authorize you to act, for want of a deputy surveyor in this district. Be careful, as I have already prescribed to you, to make the survey complete, and make a post every hundred lineal perches, on the boundary lines; and to make the party interested deliver me here my dues, which are the third part of the sum total. God preserve you many years. Pensacola, the 18th of August, 1806.

(Signed.) VINCENT SEBASTIAN PINTADO.

To Sen'r. Don Jose Collins.

Pursuant to the decree pronounced by this tribunal, on the 13th of August last, ordering that the survey and appraisement of the two tracts of land should be made for William McBoy, a native of this province, both situated in the jurisdiction of this commandancy and sub-delegation of the royal treasury. The first on the west side of the river Mobile, commencing at the mouth of the creek called Chickasaw Bogue, and thence running upwards; and the second of twenty arpens, plane, on the west side of the bay, bounded by lands of the King's storekeeper, antecedent to the order of the surveyor general of the province, given to that effect to his deputy here, Don Jose Collins, and carried into effect by him on the 14th of the past month of November, relative to the survey of the second tract (inasmuch as the first tract was claimed by Benjamin Dubroca of this vicinity, for himself and his brothers, as the heirs of his father, who had obtained the same from a French grantee;) and the said deputy surveyor having found that the said tract contained twenty and a half arpens (plane) including a lot sixty feet in front, by one hundred and twenty feet in depth, belonging to the free negro Jack, as appears by the figurative plan proceedings, which he bound and despatched on the 15th day of the same month, and that it is necessary to reduce the surperficies of twenty arpens and twenty-eight perches, because the said free negro occupies his lot, with the lawful permission of this sub-delegation. Wherefore, and in order that the subject may be more clearly manifested, McBoy prays that the original despatch may be deposited in the archives, that it may bear testimony thereof, and which was verified on the 22d of the said month. Moreover he applied to me, praying that I would order the anticipated valuation; but as I had received the appointment to office from you, with a copy for my observance of the regulations established by the Junto or Council of the royal treasury, over which you presided at the sitting of the 22d of the said mentioned month of November, and that the third regulation thereof fixes the price at two dollars the arpen for lands which may be sold, I communicated and agreed with him, and exhibited in the act (or proceedings) forty dollars and four rials and a

half, for and as the price of the said tweny arpens and twenty-eight perches, which sum I ordered to be deposited in the royal coffers, to aid in the exigencies of the post without exacting the royal duty of "media annula," and conduction, because it did not appear by the proceedings that they were to be paid. All which I communicate to you for your notice of these royal official proceedings, that there may be no difficulty in despatching the title, whenever it may be convenient to claim it. In the communication whereof, and for the security of the party interested, and that it may serve in the mean time as a receipt and paper of payment, I have delivered to him on this date, an authenticated copy of this proceeding. God preserve you many years. Mobile, the 6th of December, one thousand eight hundred and six

(Signed.) FRANC'O MAXIM'O DE ST. MAXENT.

SEN'OR INTENDENT DON JUAN VENTURA MORALES.

The United States of America, to all to whom these presents shall come, greeting:

Whereas on the fifth day of May, one thousand eight hundred and thirty-two, an act of Congress was approved, which is in the words following, to wit: "An act confirming to Joshua Kennedy his claim to a tract of land in the city of Mobile." Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Joshua Kennedy, of the city and county of Mobile, in the State of Alabama, be and he is hereby confirmed in his claim to a tract of land containing twenty and twenty-eight hundredths arpens, situate in the south part of the city of Mobile, which said claim is designated as claim number ten, in abstract A, number two of the report to the Secretary of the Treasury, on the twenty-ninth of February, one thousand eight hundred and twenty-eight, by the commissioners appointed under the act of Congress of third March, one thousand eight hundred and twenty-seven, entitled "An act supplementary to the several acts providing for the adjustment of land claims in the State of Alabama."

Sec. 2. And be it further enacted, That the commissioner of the General Land Office be, and he is hereby, authorized and required, on a return of the survey of the above mentioned tract of land by the surveyor of the lands of the United States, in the State of Alabama, to issue a patent for the same to the said Joshua Kennedy, or his legal representatives, or any person legally claiming under him, or them: Provided, however, that the confirmation of this claim, and the patent provided to be issued, shall not be held to interfere with any part of said tract which may have been disposed of by the United States previous to the passage of this act; and this act shall be held to be no more than a relinquishment of whatever title the United States may now have to such tract of land. And whereas the said Joshua Kennedy has deposited in the General Land Office a certificate, numbered seventeen, of the register and receiver of the land office, at St. Stephens, accompanied by a plat duly certified and approved by the surveyor of the land of the

United States, in the State of Alabama, whereby it appears that under the provisions of the said act, and as being the tract of land therein referred to, there has been surveyed, for the said Joshua Kennedy, a tract of land in the city of Mobile, bounded and described as follows, to wit: "Beginning at a picket at the southwest angle of the survey marked with the letter T, thence north four degrees west, twenty-eight chains and fifty links, to angle X, and set a post from which the southwest angle of the Presbyterian church bears north seventy-six degrees thirty minutes east, distant thirteen links; thence north sixty-nine degrees east, four chains twenty and a half links, to the iron bolt, the angle N, being under a house; the iron bolt is set south four degrees east, forty-eight links from the angle N; the northwest angle of the United States Bank bears from said iron bolt south thirty-five degrees fifteen minutes east, one hundred and fifty-four and a half links, the northeast angle of the court-house bears south seventy-nine degrees thirty minutes east, three hundred and sixteen links; thence return to the beginning, and run south eighty-two east, four chains and thirty-five links, to angle E, and set a post from which the cedar bears north thirty-seven degrees west, fifty-seven links; thence north four degrees west, thirteen chains and sixty-three links, and set a post at angle K; china tree bears south fifty-two degrees east, forty-one links; thence north eighty seven degrees east, eight chains and seventy links to angle M, and set a post, no bearings near; thence north seventeen degrees east, with the course of the old margin of Mobile river, five chains and twenty-nine links, to the south side of Matthew's cotton press brick wall, one hundred and three links eastwardly of the southwest angle of said building, the angle I M being fifty-one links on the course within the enclosure, making the distance on the line five chains and eighty links; thence south eighty-seven degrees west, eleven chains and two links, to angle V, from which northwest angle of Week's brick house bears south twenty-nine degrees east, eighty-seven links; the southwest angle of old fort Charlotte bears north forty-five degrees thirty minutes east, one hundred and fifty links; thence north four degrees west, eleven chains and sixty links, to angle N, before called for the survey, being within the corporate limits of the city of Mobile, containing seventeen acres and sixteen hundredths of an acre, including eight acres and twenty hundredths of an acre, heretofore sold by the Government of the United States as fort property, in lots." Now, therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with said act of Congress, have remised, released, and forever quit claimed, and by these presents do remise, release, and forever quit claim, unto the said Joshua Kennedy, and to his heirs, the said tract above described, subject to any just claim or claims to all and every part thereof, of all and every person or persons, bodies politic or corporate, derived from the United States, or from or under either the British, French, or Spanish Governments, prior to the passage of the above recited act: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto

belonging, subject to any such just claim or claims as aforesaid, unto him, the said John Kennedy, and to his heirs and assigns, forever; so that neither the United States or any other person claiming under them, except in conformity with the provisions of said above recited act, and the above reservation, may or can set up or claim any right or title thereto.

In testimony whereof I, Martin Van Buren, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the thirty-first day of March, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-first.

MARTIN VAN BUREN,
ABR. VAN BUREN, *Secretary*.

By the President:
SAMUEL D. KING,
Acting recorder of the General Land Office ad interim.
Recorded, Vol. L, page 1 to 4.

MISSISSIPPI TERRITORY,
Mobile county.

Know all men by these presents, that I, William McVoy, in consideration of the sum of five hundred dollars, paid me by William E. Kennedy and Joshua Kennedy, the receipt of which I do hereby acknowledge, have bargained and sold, and I do hereby bargain, sell, and convey, unto the said William E. Kennedy and Joshua Kennedy, their heirs and assigns forever, all the lands granted to me by the decree of the Spanish intendant, dated the 13th day of August, eighteen hundred and six, (viz:) twenty arpens in the southeast suburbs of Mobile, surveyed by order of the surveyor general of West Florida, and bounded, as will appear by reference to the survey of the same made by Joseph Collins, the 15th of November, 1806, and also the tract of land bounded south by the Chickasaw bogue; east by the Mobile river; north by the said Joshua Kennedy's land; and west by vacant land, as will more fully appear by reference to the grant of the same dated as aforesaid; to have and to hold the said granted and bargained premises, with the privileges and appurtenances thereof, to the said Wm. E. Kennedy and Joshua Kennedy, jointly, their heirs and assigns, forever. And I, the said William McVoy, shall and will by these presents, warrant and defend the aforementioned and bargained premises, from and against myself, my heirs, and assigns, (but not from and against any other person or claim whatsoever) unto the said William E. Kennedy and Joshua Kennedy, jointly, their heirs and assigns, forever.

Mobile, May sixth, in the year one thousand eight hundred and fourteen. GUILLERMO McVOY. [SEAL.]

Test:
JOHN G. WILKINS,
ALD. HOLDEN.

MISSISSIPPI TERRITORY,
Mobile county.

Personally appeared before me, Louis Doliers, esquire, a justice of the quorum of said county, the above named William McVoy, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid William E. Kennedy and Joshua Kennedy.

Given under my hand and seal this sixth day of May, in the year of our Lord one thousand eight hundred and fourteen.

LOUIS DOLIERS, *J. Q. M. C.*

The United States of America, to all to whom these presents shall come, greeting:

Whereas William Barnet, John B. Hogan, Francis W. Armstrong, Edward Hall, and Addin Lewis, assignees of Chester Root, of Mobile, Alabama, have deposited in the General Land Office of the United States, a certificate of the register of the land office at Jackson court house, Mississippi, according to the provisions of the act of Congress of the 24th of April, 1820, entitled an act making further provision for the sale of public land for the lot No. 5, in square No. 3, being thirty [feet] front, situate on the ancient site of Fort Charlotte, in the town of Mobile, in Alabama, according to the official plat of the survey of the lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Chester Root: Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided, have given and granted, and by these presents do give and grant, unto the said W. Barret, J. B. Hogan, F. W. Armstrong, E. Hall, and A. Lewis, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William Burnet, John B. Hogan, Francis W. Armstrong, Edward Hall, and Addin Lewis, and their heirs and assigns forever, in common and as joint tenants.

In testimony whereof I, James Monroe, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of October, in the year of our Lord one thousand eight hundred and twenty-one, and of the independence of the United States of America the forty-sixth.

[SEAL.] JAMES MONROE.

By the President:

JOSIAH MEIGS,
Commissioner of the General Land Office.

Recorded, vol. 1, page 21.

THE STATE OF ALABAMA, *Mobile county*.

This *date*, made this thirteenth day of December, in the year 1824, witnesseth, that I, William E. Kennedy, for and in consideration of ten thousand two hundred dollars, to me paid, before signing and ensealing hereof, by Joshua Kennedy, the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold, deeded, and confirmed, and by these presents do grant, bargain, sell, deed, and confirm, unto the said Joshua Kennedy, his heirs and assigns, forever, all these following described tracts and parcels, lots and pieces, of land, situate and being in the aforesaid State and county, to wit: all that undivided half or moiety of a certain tract, piece, or parcel of land, containing about twenty arpens, granted by the Spanish intendant, Morales, to William McVoy, in the year 1806, and conveyed by deed of sale, dated the 6th of May, 1814, from said McVoy to William E. Kennedy and Joshua Kennedy, and surveyed by order of the surveyor general of West Florida, and bounded as will appear by reference to the survey of the same made by Joseph Collins, the 14th and 15th of November, in the year 1806; and also all my right, title, property, possession, interest, claim, and demand, both in law and equity, in, to, and for, all and every part and parcel of all those two tracts or parcels of land granted by the Spanish Government, in the year 1798 and in the year 1806, to Thomas Price, containing about eleven hundred arpens, bounded on the north side by lands belonging to John Forbes & Co.; east by lands granted to Collett, Wm. McVoy, Charles Lelang, New street, and the river Mobile; south by lands granted to Lawrence Favre; west by lands granted to Antonio Espejo; and having such shapes, marks, quantity, and boundaries, as will appear by reference to the Spanish plat or survey of the same; and also the north half of all that lot, piece, or parcel of land, situate at the northeast part of the town or city of Mobile, and originally granted to Alexander Baudain, and purchased by me of Joshua Collins, and also of the said Alexander Baudine, and bounded on the north side by land granted to John Forbes & Co.; on the east side by the river Mobile; on the south side by the south half of said lot, piece, or parcel of land granted as aforesaid, and now belonging to William Ketchum; and on the west side by Royal street; and having such shape, marks, form, and quantity, as will appear by reference to the grant of the same: to have and to hold the said granted and bargained premises, with all the appurtenances, privileges, and commodities to the same belonging, or in any wise appertaining, to him, the said Joshua Kennedy, his heirs and assigns, forever, to his and their own proper use, benefit, and behoof, forever.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

WILLIAM J. KENNEDY. [SEAL.]

In presence of—
GEORGE HAUPT,
HENRY V. CHAMBERLAIN.

THE STATE OF ALABAMA, *Mobile county.*

Personally appeared before me, Hugh Rolston, clerk of the county court in and for said county, the above named William C. Kennedy, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the said Joshua Kennedy.

Given under my hand and seal this the 13th day of December, A. D. 1824.

HUGH ROLSTON, *Clerk.* [SEAL.]

Recorded pages thirty eight and thirty-nine.

G. SALTONSTALL, *Clerk.*

Received in the office the 21st day of November, A. D. 1828. Recorded in book N, page 458.

HUGH H. ROLSTON, *Clerk.*

(For map marked A, see original, page 36.)

Extract from the map of the General Land Office of the town of Mobile, exhibiting the public lots on which Fort Charlotte stands; also the adjacent ground, laid out into squares and lots, in conformity with the original plan of the town, by—

SILAS DINSMORE,
Pl. Dep. Surveyor.

Explanation of the map (or extract).

The squares shaded green represent the public lots.

The red shade bounds the public lots.

The subdivisions of the squares into lots, for sale, are represented by dotted lines.

The streets in the new survey are laid off 60 French feet wide.

The lots are 30 French feet front.

The French foot is equal to $12\frac{789}{1000}$ in. American measure.

(For map see original, page 37.)

A part of the maps made by Dinsmore, Hubbard, and Frost.

The yellow lines represent the eastern part of the McVoy grant.

The red lines represent the streets and squares as laid down by Dinsmore.

The blue lines represent the streets and squares as laid down by Hubbard, and as now situated.

The names in blue represent the names of the tenants in possession of the property sued for.

(For map see original, page 38.)

CYRUS DINSMORE.

Explanation of the map.

The squares shaded yellow represent the public lots.
The red shade bounds the public lots.
The lots are thirty French feet front.
The French foot is equal to $12\frac{789}{1000}$ inches American measure.

(For map of Hubbard, made for the lot company, and by which the lot company resold, see original, page 39.)

(For map of the McVoy claim, see original, page 40.)

(For map on page 41, see original.)

THE STATE OF ALABAMA.

And on the sixth day of January, one thousand eight hundred and forty-six, being a day of the January term of the Supreme Court, one thousand eight hundred and forty-six; present, all the judges of the said court, the following proceedings were had, to wit:

JOHN DOE, ex. dem. Hallett and Walker, executors, &c.
vs.
A. R. BEEBE.

From Mobile circuit court.

This day again came said parties, by their attorneys, and thereupon the record in this cause, and the matters assigned for error therein, having been argued and examined, it seems to the court that in the record and proceedings of said circuit court there is no error. It is therefore considered that the judgment of said circuit court be affirmed, and that the defendant in error recover of the plaintiffs the costs of this court and of said circuit court.

THE STATE OF ALABAMA.

I, James B. Wallace, clerk of the supreme court of the State aforesaid, do hereby certify, that the foregoing is a correct transcript of the record and proceedings on the same, had in the supreme court, in the

cause therein mentioned; the originals of which are on file in my office and remain of record.

In testimony whereof I have hereunto set my hand and private seal, (having no seal of office at office in the capitol,) this 21st day of October, 1847.

JAMES B. WALLACE,
Clerk of supreme court of Alabama.

The United States of America, to Alfred R. Beebe, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Doe, ex. dem. Hallett and Walker, executors of Joshua Kennedy, deceased, are plaintiffs in error, and Alfred R. Beebe, tenant in possession, &c., are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of October, in the year of our Lord one thousand eight hundred and forty-nine.

HENRY W. COLLIER,
Ch. Jts. of the sup. court of Alabama.

The United States of America, to Alfred R. Beebe, George N. Hilliard, Alexander M. Carr, Charles T. Ketchum, and John Horsfeldt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Alabama, wherein John Doe, ex. dem. Hallett and Walker, executors of Joshua Kennedy, deceased, are plaintiffs in error, and Alfred R. Beebe, tenant in possession, &c., are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this first day of March, in the year of our Lord one thousand eight hundred and forty-nine.

HENRY W. COLLIER.
Chief Justice of the Sup. Court of Alabama.

Received 31st August, 1849, and executed same day by personal notice on John F. Adams and J. M. Jarnagan, attorney for John Horsfeldt, on the 1st September, 1849.

GEO. HUGGINS, *Sheriff.*
By JOHN POLLARD, *Dp'y Sheriff.*

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States, to the honorable the judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea, which is in said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the suit between John Doe, ex dem. Hallett and Walker, executors of *John* Kenedy, deceased, and Alfred R. Beebe, tenant in possession, George W. Hilliard, Alexander M. Carr, Charles T. Ketchum, and John Horsfeldt, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, the said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said John Doe, ex dem. Hallett and Walker, executors of Joshua Kenedy, deceased, et al., as by their complaint appears.

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in *in* this behalf, do command you, if judgment be herein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and forty-nine.

HENRY W. COLLIER,
Chief Justice of the supreme court of Alabama.